

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS

3 DECISION ON ADMINISTRATIVE APPEAL
4 IN RE: PUBLIC WORKS CASE NO. 94-017
5 CONCRETE RECYCLING PLANT FOR HIGHWAY 12
6 INTERCHANGE AT STONEY POINT PROJECT
7 CITY OF SANTA ROSA
8
9

10
11 Introduction and Procedural History
12

13 Rock Recycle Company ("R.R.C.") filed an appeal on October 6,
14 1994, from the September 6, 1994 public works coverage
15 determination of the Director of the Department of Industrial
16 Relations ("Director") finding that the recycling of concrete at a
17 site adjacent to a public works site and pursuant to a contract
18 with the City of Santa Rosa ("City") is part of a larger public
19 works project. R.R.C. asks that a hearing be held pursuant to 8
20 California Code of Regulations ("C.C.R.") section 16002.5. R.R.C.
21 contends that the recycling work is not a public work because the
22 prevailing wage law did not intend to apply to material that is
23 excavated from the public works site. On November 9, 1994, the
24 Director served the appeal on the interested parties, the City and
25 Operating Engineers ("O.E."). O.E. filed a response on November
26 14, 1994, objecting to the appeal on both procedural and
27 substantive grounds. O.E. contends that R.R.C.'s failure to serve
28 the awarding body and other interested parties with the appeal, as

1 required by 8 C.C.R. section 16002.5 (a), is good cause to deny
2 the appeal. It urges the denial of the appeal on the bases both
3 that the recycling work was part of the public works site and that
4 Labor Code section 1720.3 allegedly defines public works as the
5 hauling of debris from a state agency contracted public works site
6 to an outside disposal location.

7 For the reasons set forth below, the request for a hearing is
8 denied and the initial public works coverage determination is
9 affirmed.

10 Issues on Appeal

11
12 A. Whether the appeal should be dismissed for failure of R.R.C.
13 to serve the City and O.E. with the appeal.

14 B. Whether a hearing is required to resolve the appeal.

15 C. Whether, under the facts of this case, the recycling of the
16 excavated material from the public works site is a public works
17 under Labor Code section 1772.

18 D. Whether, under the facts of this case, the recycling of the
19 excavated material from the public works site is a public works
20 under Labor Code section 1720.3.

21 Conclusions on Appeal

22
23 A. In light of this decision that the recycling work is a public
24 work, the question whether the appeal should be dismissed for
25 failure of R.R.C. to serve O.E. with the appeal need not be
26 reached.

27 B. No hearing is required.

28 ///

1 C. Under the facts of this case, the recycling of the excavated
2 material from the public works site is a public works under Labor
3 Code section 1772.

4 D. Under the facts of this case, the recycling of the excavated
5 material from the public works site is not a public works under
6 Labor Code section 1720.3.

7
8 Facts

9 This case begins with a contract between the City and the
10 general contractor, Dutra Construction Company ("Dutra") for the
11 construction of a new highway interchange at Highway 12 and Stony
12 point Road in the City of Santa Rosa. The contract requires Dutra
13 to have the material excavated from the project site recycled.
14 Under the contract, the City has compensated Dutra on a square
15 yard basis for removing and recycling the excavated concrete into
16 Class # 3 Aggregate base rock. The contract between the City and
17 Dutra requires that the excavated material be recycled in order to
18 reduce the amount of solid waste the public works project
19 produces. The recycling is performed at a portable and temporary
20 facility on land adjacent to the public works site. The adjacent
21 land was not used for recycling work until the property owner,
22 Robert Ring ("Ring") subcontracted with R.R.C. to receive and
23 recycle the materials from the adjacent highway improvement public
24 works site. Ring has a contract with Dutra to purchase the
25 material to be recycled. Dutra removed and had the materials
26 transported to the recycling site. The City granted Ring a use
27 permit for recycling on the property limited to the period of the
28 construction; the recycling plant must cease operating after the

1 public works project is concluded. Some part of the recycled
2 material was supposed to have been reincorporated back into the
3 public works site and the balance sold to other construction
4 contractors. The City originally envisioned that the recycled
5 concrete would be reincorporated into the project as Class #3
6 Aggregate base rock. Apparently, delays in setting up the
7 portable recycling equipment made this impossible and Dutra had to
8 buy base material from other sources. Apparently R.R.C. was not
9 required by its agreement with Ring to pay prevailing wages to the
10 workers performing the recycling work.

11 Discussion
12

13 A. The issue whether the failure of R.R.C. to serve its appeal
14 on O.E. requires a dismissal of the appeal need not be reached
15 herein.

16 O.E. urges that the timely appeal of R.R.C. should be
17 dismissed for failure of O.E. to serve a copy of the appeal on
18 O.E. O.E. contends that because notice is mandatory, the appeal
19 must be denied. This Decision will not reach this issue because
20 it decides that the recycling work is a public works for which
21 prevailing wages must be paid.

22 B. No hearing is required herein.

23 8 C.C.R. section 16002.5(b) states that: "The decision to
24 hold a hearing is within the Director's sole discretion." In the
25 interest of conserving the resources of both the Department and
26 the interested parties, hearings are generally not held in appeals
27 of public works coverage determinations unless one is necessary to
28 resolve substantial disputes as to material facts. The only fact
recited above that is in dispute is whether the recycled material

1 is reincorporated into the highway project. This disputed fact is
2 not material to the resolution of this case. Since the remaining
3 issues to be decided are essentially legal issues, no hearing is
4 necessary, and the appeal is decided on the basis of the evidence
5 previously submitted.

6
7 C. Under the facts of this case, the recycling of the excavated
8 material from the public works site is a public works under Labor
9 Code section 1772.

10 R.R.C. asserts in its appeal that Labor Code 1772, which
11 provides that "[w]orkers employed by contractors or subcontractors
12 in the execution of any contract for public work are deemed to be
13 employed upon public work," and applicable case law do not extend
14 to the processing of material excavated or removed from a public
15 works site for recycling. R.R.C. further asserts that recycling
16 the concrete for sale primarily to other contractors also takes
17 the work outside the purview of the prevailing wage law.

18 In this case, there is a contract between the City and the
19 general contractor that requires the general contractor to have
20 the material excavated from the project recycled. Under the
21 contract, the City compensates the general contractor on a square
22 yard basis for removing and recycling the excavated material.
23 Section 10-1.31 of the contract between the City and Dutra
24 requires the concrete to be recycled and specifies that the City
25 will pay Dutra to do the recycling:

26 The contractor shall dispose of the concrete
27 removal by the "Remove Portland Cement
28 Concrete Pavement" item at a recycler that
will recycle the material. Known recyclers
for these material include Rock Recycle
Company in Sebastapol [Contact Mr. Jerry Drake

1 at (707) 823-5098] and Zamaroni quarry on
2 Petaluma Hill Road [Contact Mr. Arnie Tognozzi
3 at (707) 575-3915]. The contractor shall
4 provide receipts verifying delivery of the
5 material to an approved recycler....
6 Full compensation for recycling shall be
7 included in the contract alternate price for
8 recycle concrete pavement and no additional
9 allowance will be made therefor. The unit
10 price for "Recycle Concrete" will be in
11 addition to the unit price paid for "Remove
12 Portland Cement Concrete Pavement."

13 The recycling was performed at a temporary facility adjacent to
14 the public works site. This facility was set up exclusively to
15 serve the public works project and ceased to operate after the
16 public works project was complete. Because the recycling work was
17 performed in the execution of the public works contract, the
18 recycling of the excavated material from the highway improvement
19 project is part of the public works project and prevailing wages
20 must be paid to the workers performing the recycling.

21 D. Under the facts of this case, the recycling of the excavated
22 material from the public works site is not a public works under
23 Labor Code section 1720.3.

24 O.E. contends that this project should be considered a public
25 works because it involves "the hauling of debris from a state
26 agency contracted 'public works site' to an outside disposal
27 location." Labor Code section 1720.3 defines public works to
28 include "the hauling of refuse from a public works site to an
outside disposal location, with respect to contracts involving any
state agency." The contract in question here is with the City of
Santa Rosa and not a state agency. By its own terms the statute
is inapplicable to this case.

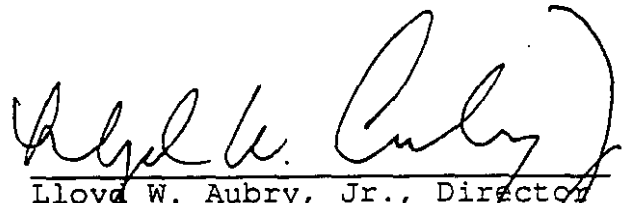
///

Conclusion

The workers and mechanics engaged in the recycling of concrete from the construction project at Highway 12 and Stony Point Road in the City of Santa Rosa were performing work in the execution of a public works contract, and were therefore employed upon a public works project subject to the requirement to pay prevailing wages.

Date:

11/26/94


Lloyd W. Aubry, Jr., Director
Department of Industrial Relations